

***What Every Member of the  
Trade Community Should Know About:***

***Customs Administrative  
Enforcement Process:  
Fines, Penalties,  
Forfeitures and Liquidated  
Damages***



A Basic Level  
Informed Compliance Publication of the  
U.S. Customs Service

Revised June, 2000

## **NOTICE:**

This publication is intended to provide guidance and information to the trade community. It reflects the Customs Service's position on or interpretation of the applicable laws or regulations as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community’s rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs has issued a series of informed compliance publications, and videos, on new or revised Customs requirements, regulations or procedures, and a variety of classification and valuation issues.

The International Trade Compliance Division of the Office of Regulations and Rulings has prepared this publication on ***Customs Administrative Enforcement Process: Fines, Penalties, Forfeitures and Liquidated Damages*** as part of a series of informed compliance publications regarding Customs procedures. We sincerely hope that this material, together with seminars and increased access to Customs rulings, will help the trade community to improve, as smoothly as possible, voluntary compliance with Customs laws.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

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# **Customs Administrative Enforcement Process: Fines, Penalties, Forfeitures & Liquidated Damages**

## **I. Introduction**

Enforcement of the Customs, navigation and related laws has been an important function of the U. S. Customs Service since the foundation of the Federal government under the U.S. Constitution in 1789. The second act of the new Federal government was the Act of July 4, 1789, "laying duties on goods, wares and merchandises (sic) imported into the United States." The third act was the Act of July 20, 1789 "imposing duties on tonnage" of vessels. These and subsequent tariff acts were to be the major sources of Federal revenue until the income tax arrived in the early twentieth century. In order to administer and enforce these important revenue laws, the fifth act of Congress, the Act of July 31, 1789, established a Customs Service, consisting of collectors, naval officers and surveyors in 59 districts in the eleven states which had ratified the new Constitution (North Carolina and Rhode Island had not yet ratified the Constitution and were treated as foreign countries under the tariff laws).

The Act of July 31, 1789 also established fines and penalties and subjected merchandise to forfeiture for breaches of the various provisions. The authority to make seizures and enforce any fines, penalties or bond provisions was vested in the Customs field personnel, and the collectors were authorized to institute judicial proceedings to perfect any forfeitures and collect any fines or penalties which had accrued. In the early years, all fines, penalties, and forfeitures required judicial enforcement, and there was no provision allowing the granting of equitable relief. However, these problems were partially remedied in the Act of March 3, 1797, when the authority to grant equitable relief from a penalty or forfeiture by way of remission or mitigation was vested in the Secretary of the Treasury after a petition seeking such relief had been filed in court, and a judge had reported the facts to the Secretary.

The original procedures were very cumbersome. The collector transmitted all enforcement actions to the United States district attorney (now renamed the U. S. Attorney) who instituted the judicial collection or forfeiture action. A person seeking relief had to admit the violation, or await a court judgment finding a violation, and submit a petition for relief explaining the facts and circumstances that led to the violation. The judge then examined the circumstances and reported the facts to the Secretary of the Treasury, who could mitigate or remit the fine, penalty or forfeiture and order discontinuance of the litigation.

Subsequent legislation simplified the procedures by allowing petitions for relief to be filed directly with the Secretary, prior to commencement of litigation and by establishing administrative procedures for forfeiture and penalty assessment. Initially, these procedures only applied to cases involving low value forfeitures or small monetary fines or penalties (under \$50), but eventually these procedures were extended to all cases.

In the early years, the Secretary of the Treasury personally exercised the authority to remit or mitigate fines, penalties or forfeitures. Over the years, as the country grew and the Secretary's responsibilities increased, the Secretary's authority to remit or mitigate penalties and forfeitures was delegated to subordinate officials in the Department and the Customs Service. The present remission and mitigation authority is contained in 19 U.S.C. 1618 and 19 U.S.C. 1623(c) which provide:

19 U.S.C. 1618

Whenever any person interested in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if under the navigation laws, before the sale of such vessel, vehicle, aircraft, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs officer to take testimony upon such petition: Provided, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

19 U.S.C. 1623(c)

The Secretary of the Treasury may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount or penalty or upon such other terms and conditions as he may deem sufficient. In order to assure uniform, reasonable, and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.

The Secretary has also been granted the authority to compromise claims. This authority is presently contained in 19 U.S.C. 1617 which provides:

Upon a report by a customs officer, United States attorney, or any special attorney, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is authorized to compromise such claim, if such action shall be recommended by the General Counsel for the Department of the Treasury.

## **II. Delegation Of Authority From Treasury Over Functions Relating To Fines, Penalties, Forfeitures And Liquidated Damages**

Customs has full authority to assess penalties and liquidated damages claims and seize merchandise for violations of customs or other laws enforced by the Customs Service. With the exception of certain instances where the Treasury Department has retained jurisdiction, Customs has been delegated broad authority to remit, mitigate, cancel or compromise claims for forfeitures, penalties or liquidated damages.

Generally, assessments of forfeitures, penalties and liquidated damages claims are made by the local Fines, Penalties and Forfeitures Officers (FPFOs) throughout Customs. Currently, forty-three (43) FPFOs and six (6) National Seizures and Penalties Officers (NSPOs) are located in the Customs field offices. These officials have been delegated the authority of the Commissioner of Customs to issue decisions on initial and supplemental petitions for relief from penalty, forfeitures and liquidated damages claims for *amounts not exceeding \$100,000 in value*, except in the limited circumstances where the delegated amount is either higher or lower.

The Office of Regulations and Rulings (OR&R), International Trade Compliance (ITC) Division, Headquarters, which includes the Penalties Branch, has been delegated the authority of the Commissioner of Customs to issue decisions on initial and supplemental petitions for claims *exceeding \$100,000 in value*, except in the limited circumstances where the delegated amounts to the field are either higher or lower.

## **III. Administrative Process For Forfeiture Claims In Cases Of Seizure Of Property For Violations Of Customs Or Other Laws**

### **A. What Is A Seizure And When May It Occur?**

Property may be “seized” for certain violations of the Customs and related laws. In a seizure, a government official takes physical possession of the merchandise or other article, such as a car, vessel or aircraft.

Under the Customs laws, there are two types of seizures. The first is where a law provides for “forfeiture” of the property. In these situations, if the forfeiture is perfected through appropriate judicial or administrative means, the seized property will become the property of the Federal government and the owner and any other claimants will lose their interest in the property. In most of these cases, the forfeiture “relates back” to the time of the offense and the United States obtains good title from that date. In the second type of seizure, the property is seized to secure payment of a monetary penalty. If the penalty is not paid, the property will be sold to pay the penalty, with the balance being subject to claims of the owners, lien holders or other lawful claimants.

Customs must have probable cause to believe that there was a violation of a customs law or other law enforced by Customs with respect to specific property (e.g., undeclared or smuggled property; counterfeit trademark goods). If, pursuant to statutory authority and Customs seizure policy, property is seized, the seizure represents enforcement action against the property (i.e., a claim for forfeiture). Except in the case of seizures to secure payment of a penalty, the property, not the importer, is considered the violator.

Types of seized merchandise and infractions include:

- prohibited merchandise (e.g., controlled substances, pornography, counterfeit goods, etc.);
- restricted merchandise (e.g., restrictions imposed by textile quota agreements, Consumer Product Safety Commission, Foreign Assets Control, Environmental Protection Agency, Food and Drug Administration/USDA, etc.);
- undeclared, unreported or smuggled merchandise (e.g., goods undeclared by passengers entering the U.S., unreported currency over \$10,000, etc.); and
- goods which aid or facilitate the illegal importation of merchandise (e.g., conveyances or other merchandise used to hide or conceal illegal goods).

Customs may consider various alternatives prior to seizure. First, Customs can reject or deny entry. Second, Customs may detain goods. Detention represents a formal Customs procedure, which requires notice to the importer within five (5) days from the decision that a restriction applies. Third, if the goods are not prohibited, they may be entered into a bonded warehouse or a foreign trade zone (FTZ) with subsequent withdrawal once the defect or restriction is corrected. Fourth, Customs may issue a monetary penalty (e.g., 19 U.S.C. 1592 or 1595a(b)) in lieu of seizure if the defect or restriction pertaining to the good is corrected. By policy, prospective seizures of certain property having a domestic value of \$100,000 or greater require advance referral to, and approval by Headquarters.

## **B. When Will Customs Proceed With A Forfeiture?**

Generally, administrative forfeiture pursuant to 19 U.S.C. 1607 is appropriate if the seized goods are:

- of a forfeiture value of \$500,000 or less;
- a conveyance used to smuggle drugs;
- prohibited merchandise; or
- monetary instruments of any amount.

However, the claimant also may obtain judicial forfeiture by filing a cost bond in the penal sum of the lesser of \$5,000 or 10% of the forfeiture value of the claimed property, but not less than \$250. (19 U.S.C. 1608 and 19 CFR 162.47.)

In almost all other cases, judicial forfeiture pursuant to 19 U.S.C. 1610 is appropriate.

In the case of goods or other property subject to administrative forfeiture, a Notice of Seizure is sent to known parties having an interest in the seized property which advises them of their options. Generally, these parties may:

- choose to do nothing, in which case the government will begin forfeiture proceedings by publishing a notice in a newspaper on the date specified in the notice;
- request that Customs begin forfeiture proceedings sooner than the date specified in the notice;
- file a petition for relief (with a waiver of immediate institution of forfeiture proceedings);
- make an offer in compromise to settle the case; or
- file a claim and cost bond to initiate immediate referral to the U.S. Attorney for the institution of judicial forfeiture.

In the case of goods subject to judicial forfeiture, parties known to have an interest are sent a Notice of Seizure and a Notice of Election of Proceedings [option to petition for administrative relief under 19 U.S.C. 1618, or to request the institution of immediate forfeiture].

In connection with any seizure of property that may be related to a possible criminal prosecution, Customs must report the matter to the appropriate U.S. Attorney. If requested by the U. S. Attorney, the administrative processing of seizures, may be delayed to avoid interference with any criminal prosecution. Assuming criminal prosecution is declined, or, if accepted, Customs has received consent of the U.S. Attorney to proceed administratively, the notices discussed above will be issued.

Generally, most claimants of seized property waive their rights to immediate forfeiture and elect to file a petition for administrative relief from the forfeiture. With the exception of certain instances where the Secretary of Treasury specifically has retained jurisdiction, Customs has been delegated broad authority, pursuant to 19 U.S.C. 1618, to remit or mitigate claims for forfeitures (i.e., provide administrative relief) through its petition decisions.

In cases subject to administrative forfeiture, if no petition for relief is filed or claim and bond given pursuant to 19 U.S.C. 1608, Customs will proceed to forfeit the conveyance or merchandise by publishing a notice in a newspaper for three consecutive weeks, after which the property is deemed forfeited (unless during that time a claim and cost bond is filed). (19 U.S.C. 1609.)

### **C. When Will Customs Permit Early Release Of Seized Property?**

Pending a final decision on the section 1618 petition (see discussion below), Customs also entertains requests for early release of the seized property, provided:

- the importation is not prohibited;
- the petitioner deposits a sum that approximates the final amount for remission of the forfeiture; and
- the petitioner agrees to hold the government harmless and pay administrative (e.g., storage) charges in connection with the seizure.

The local FPFO responsible for the seizure makes the early release decision in cases where the forfeiture value of the seized property is less than or equal to \$100,000. OR&R, ITC Division, must approve the decision where the forfeiture value is greater than \$100,000.

### **D. What Are The Steps To The Petition Process For Remission Of A Forfeiture?**

After receiving the Notice of Seizure, a person having an interest in the seized property may file a petition for relief with the local FPFO. There is no requirement for any specific format for the petition for relief. A letter detailing the underlying facts and circumstances is sufficient.

Generally, dispositions of petitions adhere to established guidelines for granting or denying relief based upon mitigating factors (e.g., cooperation by the petitioner with the Customs investigation) or aggravating factors (e.g., prior record of a similar violation by the petitioner). If relief is granted, in lieu of forfeiture of the property, Customs collects from the petitioner a monetary amount generally based upon specified percentages of the dutiable value of the seized property (e.g., remission upon payment of 30-50 percent of the dutiable value for first time, intentional importation contrary to law). Normally, dutiable value (the value upon which Customs assesses duties) is less than the forfeiture (domestic) value of the seized goods.

***The petition period normally is limited to thirty (30) days, unless the FPFO extends the period. A petitioner may file a supplemental petition seeking further review of the petition. In cases where the violator does not file a petition, the case may be referred to the U.S. Attorney for judicial forfeiture or processed administratively for summary forfeiture disposition.***

All petitions for relief are filed with the FPFO. In most cases (**e.g., seizures for introduction [or facilitation of the introduction] of merchandise contrary to law under 19 U.S.C. 1595a(c) and 1595a(a) and export control or Office of Foreign Assets Control [OFAC] seizures (22 U.S.C. 401)**), the FPFO decides petitions in cases where the forfeiture value of the seized goods is less than or equal to \$100,000 and OR&R, ITC Division, decides those petitions in cases where the forfeiture value is greater than \$100,000. The same jurisdictional amounts apply to supplemental petitions, except that if the forfeiture value is less than or equal to \$100,000, the NSPO decides. (For further information concerning the petition process, see 19 CFR Part 171.)

However, the following are examples of exceptions to the above general rule regarding petition decisions:

- For the **failure to declare merchandise (19 U.S.C. 1497)** (forfeiture value plus personal penalty), the FPFO decides petitions in cases where the dual liability is less than or equal to \$100,000. The OR&R, ITC Division, decides those petitions in cases where the dual liability is between \$100,000 and \$250,000. Treasury decides those petitions in cases where the dual liability is greater than \$250,000.
- In cases of **monetary instruments or currency reporting (31 U.S.C. 5316 and 5317)** violations, the FPFO decides petitions where the forfeiture value of the monetary instrument is less than or equal to \$100,000. OR&R, ITC Division, decides those petitions in cases where the forfeiture value is between \$100,000 and \$500,000. Treasury decides those petitions in cases where the forfeiture value is greater than \$500,000. However, if OR&R, ITC Division, decides not to remit the forfeiture or any portion of the monetary instruments, it maintains jurisdiction regardless of the forfeiture value of the monetary instrument.
- Finally, in cases of violations involving **conveyances (such as 19 U.S.C. 1595a(a))**, the FPFO decides petitions where the forfeiture value of the conveyance (e.g., aircraft, vehicles, vessels, etc.) is less than or equal to \$100,000. OR&R, ITC Division, decides those petitions in cases where the forfeiture value is between \$100,000 and \$500,000 and where the case does not involve common carriers. The Treasury decides those petitions in cases where the forfeiture value is greater than \$500,000 or the case involves common carriers.

## **E. What Are Customs Dispositions For Remission Of A Forfeiture And What Action May Customs Take If A Petitioner Does Not Comply With Such Relief?**

Customs remits most forfeitures (i.e., returns the property) upon payment of a monetary amount and costs associated with the seizure (e.g., storage) as well as upon execution of a Hold Harmless Agreement by the petitioner. In many cases, including the introduction (or facilitation of the introduction) of merchandise contrary to law under 19 U.S.C. 1595a(c) and 1595a(a), Customs will release the seized property upon payment of an amount within the following ranges:

- First offense with mitigating, but no aggravating factors: payment of 10-30% of the dutiable value of the seized goods.
- First offense with aggravating factors or second offense with no aggravating factors: payment of 30-50% of the dutiable value of the seized goods.
- Second offense with aggravating factors or third/subsequent offense: payment of 50-80% of the dutiable value of the seized goods.

For the remission of goods subject to forfeiture in cases of **export control or Office of Foreign Assets Control (OFAC) violations under 22 U.S.C. 401**, if the exporter corrects the violation Customs generally will release the seized property upon payment of an amount within the following ranges for violations occurring within a three year period:

- Substantive Violations (i.e., failure to obtain a State or Commerce Department license)
  - First offense: \$2,500 or the invoiced value of the violative goods, whichever is lower.
  - Second offense: \$3,500 or the invoiced value of the violative goods, whichever is lower.
  - Third offense: \$5,000 or the invoiced value of the violative goods, whichever is lower.
  - Fourth offense: \$7,000 - \$10,000 (depending on mitigating or aggravating factors), or the invoiced value of the goods, whichever is lower.
- Technical Violations (i.e., failure to validate, present, or reference a State or Commerce Department license)

- First offense: \$500 or invoiced value of violative goods, whichever is lower.
- Second offense: \$750 or invoiced value of violative goods, whichever is lower.
- Third offense: \$1,500 or invoiced value of violative goods, whichever is lower.
- Fourth and subsequent offenses: \$2,000-\$4,000 (depending on mitigating or aggravating factors), or the invoiced value of the violative goods, whichever is lower.

For the remission of liability in cases of the **failure to declare merchandise under 19 U.S.C. 1497**, Customs utilizes the guidelines set forth in 19 CFR Part 171, App A. Although these guidelines should be consulted for a full explanation, Customs generally will remit the liability upon payment of an amount within the following ranges:

- Violations Involving Dutiable Articles
  - If first offense, where there is knowledge of the declaration requirements, the undeclared articles are discovered by the Customs officers, and there are no mitigating or aggravating factors: Three times duty (but not less than \$50), or the domestic value, whichever is lower.
  - If mitigating factors are present: From one and one-half to three times the duty, or the domestic value, whichever is lower.
  - If extraordinary mitigating factors are present: Customs may reduce the mitigated amount to one times the duty.
  - If aggravating factors are present: From three to six times the duty (but not less than \$100), or the domestic value, whichever is lower.
  - If extraordinary aggravating factors are present: From six to eight times the duty, or the domestic value, whichever is lower, in cases where the offense is a second or subsequent violation. No less than eight times the duty, or the domestic value, whichever is lower, in cases where the offense is a second or subsequent violation and there are aggravating factors.
- Violations Involving Absolutely Free (duty free HTSUS provisions) or Conditionally Free (Generalized System of Preferences [GSP], Chapter 98, HTSUS, etc.) Articles

- If first offense, involving conditionally free articles: One time the duty that would have been due if the articles had not been entitled to the benefit.
- If first offense, involving absolutely duty-free articles: From one to five percent of the domestic value, but not less than \$50 (or the domestic value, whichever, is less) nor more than \$1,000.
- If mitigating factors are present: Customs may reduce the mitigated amount to a lower figure.
- If aggravating factors are present: For conditionally free articles, from one to two times the duty (but not less than \$100), or the domestic value, whichever is lower, and for absolutely free articles, from five to ten percent of the domestic value, but not less than \$100.

For the remission of goods subject to forfeiture in cases of **monetary instrument or currency reporting violations under 31 U.S.C. 5316 and 5317**, Customs generally will release the monetary instrument or currency upon payment of the following standard amounts based on the amount transported (in cases where the reporting violation has no connection to illegal activity):

- Transport of \$15,000 or less: \$500 standard amount.
- Transport of \$15,001 - \$25,000: \$1,000 standard amount.
- Transport of \$25,001 - \$40,000: \$2,500 standard amount.
- Transport of \$40,001 - \$70,000: \$5,000 standard amount.
- Transport of \$70,001 - \$120,000: \$10,000 standard amount.
- Transport of \$120,001 - \$200,000: \$20,000 standard amount.
- Transport of \$200,001 - \$500,000: \$30,000 standard amount.
- Transport of \$500,001 - \$1,000,000: \$50,000 standard amount.
- Transport of more than \$1,000,000: decided in accordance with Customs Treasury delegations and policy.

[Note that Treasury approval is required in cases where the forfeiture value is greater than \$500,000.]

Customs may reduce the amount sought for remission by up to ten (10) percent of the standard amount for each mitigating factor present, but by no more than thirty (30)

percent of the standard amount. Extraordinary mitigating factors may warrant remission of all, or a significant portion of the standard amount.

### **Factors To Be Considered In All Cases**

With regard to the disposition of any forfeiture case, **mitigating factors**, when applicable, may decrease the penalty amount the petitioner must pay for remission of the forfeiture. Generally, mitigating factors include:

- prior good record;
- inexperience;
- cooperation with, or voluntary disclosure of a violation to, Customs officers; and
- contributory Customs negligence.

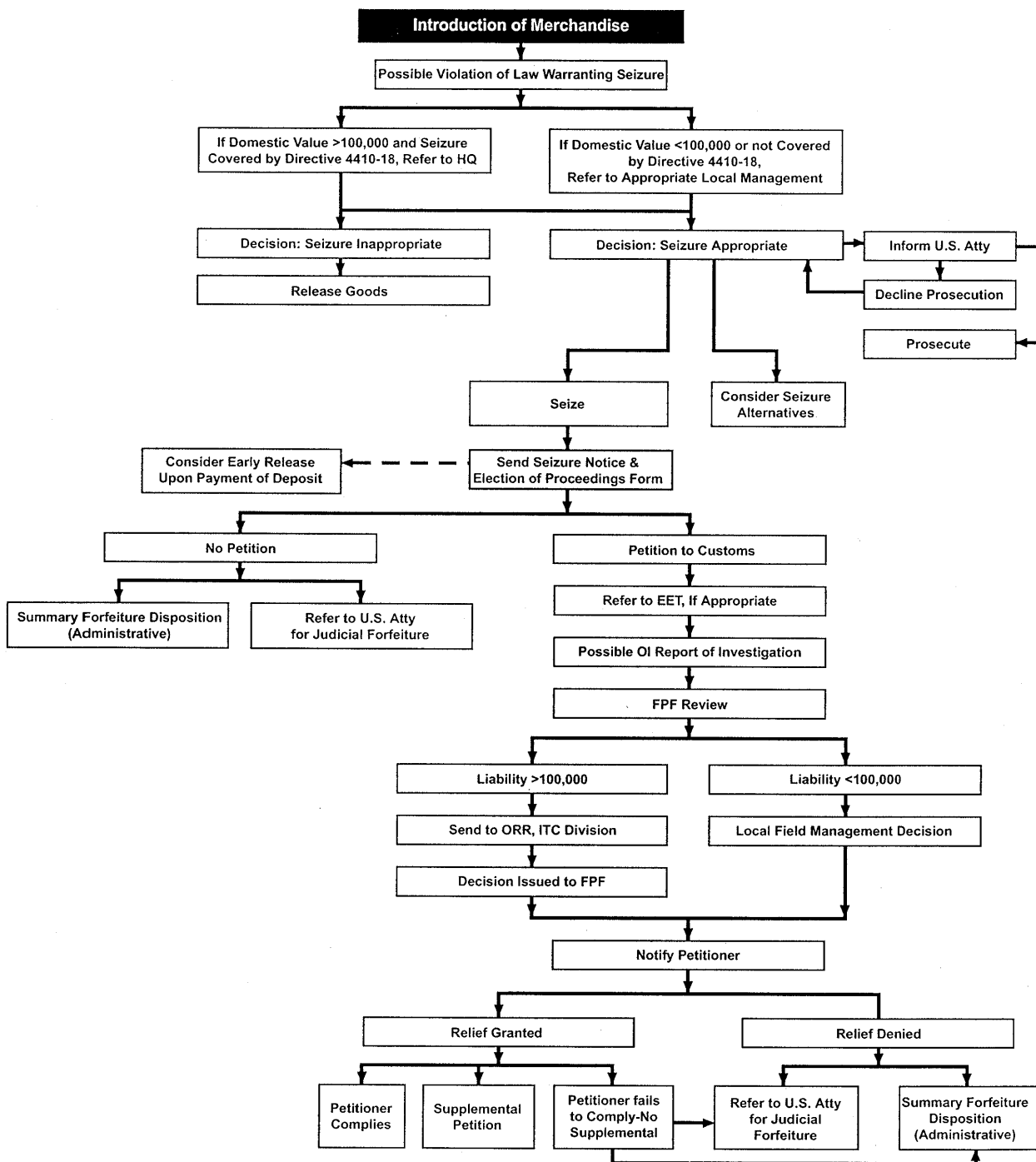
**Aggravating factors** are those which, when applicable, could result in an increase of the penalty amount the petitioner must pay for remission of the forfeiture, or could result in relief from the forfeiture being denied. Aggravating factors include:

- criminal violation relating to the subject transaction;
- repetitive violations of the same restriction involved in the seizure; and
- evidence that the violation was intentional.

In any cases where either Customs denies the petitioner any relief or the petitioner fails to comply with the relief granted by Customs, the case either will be referred to the U.S. Attorney for judicial forfeiture or will be processed administratively by Customs for summary forfeiture disposition.

[See next page for a chart of the seizure process]

## Administrative Process: Seizures



## **IV. Administrative Process For Monetary Penalties Assessed Against Individuals Involved In A Violation**

### **A. When Is A Penalty Assessed Against An Individual?**

When a violation of Customs laws or laws enforced by Customs is discovered, in addition to, or in lieu of, seizure and/or referral for criminal prosecution, Customs usually has the option of assessing a personal penalty against the alleged violator(s). In some cases, commercial violations are first reviewed by a multidiscipline Enforce Evaluation Team (EET) to determine whether a penalty should be issued or whether another action would be more appropriate under the circumstances. The EET may recommend actions ranging from compliance improvement plans to referral for criminal prosecution.

### **B. What Are The Steps To The Penalty Process?**

#### **i. Customs Issues Prepenalty And/Or Penalty Notices**

While the penalty process generally begins with the FPFO's issuance of the Penalty Notice (CF 5955A) to the alleged violator, some statutes require the issuance of a prepenalty notice and opportunity for response before Customs makes its penalty claim (i.e., issues a penalty notice).

A prepenalty notice is a written notice that Customs is "contemplating" issuance of a penalty against a named person and/or entity. At this preliminary stage, the named person and/or entity is given information regarding the alleged violation and provided an opportunity to present reasons why Customs either should not issue the penalty claim at all, or should not issue the penalty claim in the contemplated amount.

Penalties requiring the issuance of a prepenalty notice before issuance of a penalty notice include:

- commercial fraud and negligence (19 U.S.C. 1592);
- drawback penalties (19 U.S.C. 1593a)
- customs broker penalties (19 U.S.C.1641);
- recordkeeping penalties (19 U.S.C. 1509);
- falsity or lack of manifest (19 U.S.C.1584(a)(1)); and
- equipment and vessel repairs (19 U.S.C. 1466).

Generally, the alleged violator has thirty (30) days from the date of mailing of the prepenalty notice for response.

Penalties not requiring the issuance of a prepenalty notice include:

- penalties for aiding unlawful importation (19 U.S.C. 1595a(b));

- drug related manifest penalties (19 U.S.C. 1584(a)(2));
- counterfeit trademark penalties (19 U.S.C. 1526(f));
- conveyance arrival, reporting, entry, and clearance violations (19 U.S.C. 1436); and
- coastwise trade (Jones Act) violations (46 U.S.C. App. 883).

## **ii. Alleged Violator Responds And/Or Petitions**

Upon receipt of the alleged violator's prepenalty response, the FPFO either will proceed to issue a penalty claim if the violation is substantiated or issue a written statement that Customs has chosen not to assess a penalty.

If the FPFO assesses a penalty, generally, the alleged violator has sixty (60) days from the date of mailing the penalty notice to file a petition for relief. If the alleged violator provides no response (petition), Customs may refer the case for collection action.

Most penalties are assessed at the statutory maximums applicable to the alleged violation (e.g., most section 1592 fraud penalties are assessed at the maximum domestic value amount). However, in most cases, petitions for mitigation or remission are filed under 19 U.S.C. 1618. Petitioners may be permitted to make oral presentations to Customs officials, depending on the law and regulations involved.

Customs decides to grant or deny mitigation of penalties in accordance with established guidelines for the particular penalty statute involved. For instance, guidelines for section 1592 and section 1641 penalties are set forth as Appendices B and C of Part 171 of the Customs Regulations.

The alleged violator may file a first supplemental petition for further relief from the penalty. Generally, the office unit that decided the initial petition may grant further relief. However, if the request for further relief is recommended to be denied, a higher-level office unit must decide the matter. A second supplemental petition, however, may be filed only after full payment is made of the penalty amount stated in the decision on the first supplemental petition.

## **iii. Customs May Refer Claims For Collection Action And/Or Judicial Enforcement**

If the assessed or mitigated penalty is **not** paid within

- the time stated in the penalty notice (e.g., cases where a petition for relief is not filed in response to Customs penalty claim) or
- the time stated in the decision on the petition (or supplemental petition),

the penalty claim will be referred for collection action.

For all penalties except section 1592, 1593a and section 1641 penalties, the cases initially are referred to the Customs National Finance Center for billing, before referral for judicial enforcement. For section 1592, 1593a and section 1641 penalties, the collection action begins by immediate referral of the case to the Office of Chief Counsel for initiation of judicial enforcement proceedings.

#### **iv. Customs Also May Compromise Or “Settle” Claims**

In addition to the authority to remit and mitigate penalties and forfeitures pursuant to 19 U.S.C. 1618, the authority delegated by the Secretary of the Treasury to the Commissioner of Customs includes the authority to compromise (settle) penalty claims pursuant to 19 U.S.C. 1617, upon the recommendation of the General Counsel of the Treasury Department or his designee (usually the Office of Chief Counsel of Customs). The only relevant factors in deciding whether to compromise a claim are:

- the risks in litigation for the government’s recovery of the assessed penalty amount and
- the financial inability of the alleged violator to pay the assessed or mitigated penalty.

The alleged violator may make an offer in compromise at any time during the course of the penalty proceeding.

Claims under section 1592(d) for the loss of duties lawfully owed Customs (i.e., duty demands) as a result of a commercial fraud, gross negligence or negligence violations may be compromised only by the Secretary of the Treasury, or his designee upon approval by the Office of General Counsel, or his designee. The Secretary of the Treasury has not delegated his authority to compromise duty claims to Customs.

### **C. What Are The Specific Elements Comprising The Various Monetary Penalties?**

#### **i. Commercial Fraud and Negligence Penalties (19 U.S.C. 1592)**

19 U.S.C. 1592 provides for penalties against any person who:

- by fraud (i.e., voluntarily and intentionally), gross negligence (i.e., with actual knowledge or wanton disregard), or negligence (i.e., fails to exercise reasonable care),
- enters or introduces (or attempts to enter or introduce) any merchandise into the commerce of the U.S.,
- by means of any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or any omission which is material (i.e., the falsity has the potential to alter the classification, appraisement, or admissibility of merchandise, or the liability for duty or if it tends

to conceal an unfair trade practice under the antidumping, countervailing duty or similar statute, or an unfair act involving patent or copyright infringement).

Section 1592 provides for the assessment of penalties against the alleged violator at a maximum of:

- the domestic value of the merchandise in the case of fraud violations;
- four times the loss of lawful duties, taxes, and fees deprived the government, or 40% of the dutiable value if the violation did not affect the assessment of duties (but in no case to exceed the domestic value of the merchandise), in the case of gross negligence violations; and
- two times the loss of lawful duties, taxes, and fees deprived the government, or 20% of the dutiable value if the violation did not affect the assessment of duties (but in no case to exceed the domestic value of the merchandise), in the case of negligence violations.

Pursuant to 19 U.S.C. 1592(d), Customs also may issue duty demand claims, in addition to penalties, for violations of section 19 U.S.C. 1592(a), which have resulted in the loss of lawful duties. The FPFO issues notice to any person liable for payment of the actual duties (e.g., the violator, the importer or, if unable to pay, the surety).

Petitions for relief from section 1592 penalties may be filed pursuant to 19 U.S.C. 1618. All petitions are filed with the FPFO of the port at which the penalty is assessed. The FPFO decides petitions in cases where the penalty claim is less than or equal to \$50,000, and OR&R, ITC Division, decides those petitions in cases where the penalty claim is greater than \$50,000. The NSPO decides supplemental petitions in cases where the penalty claim is less than or equal to \$25,000, and OR&R, ITC Division, decides those supplemental petitions in cases where the penalty claim is greater than \$25,000.

Customs considers various mitigating and aggravating factors throughout the petition stage.

- **Mitigating factors** include: contributory Customs error, cooperation with the investigation, immediate remedial action, inexperience in importing, and prior good record.
- **Extraordinary mitigating factors** justifying further relief include: inability to obtain jurisdiction or to enforce a judgment against the violator, inability to pay the mitigated penalty, extraordinary expenses for the alleged violator, and Customs knowledge of the violation.
- **Aggravating factors** include: obstructing the investigation, withholding evidence, providing misleading information concerning the violation, textile transshipment, and prior substantive 1592 violations with a final administrative finding of culpability.

Generally, Customs may mitigate section 1592 penalties to amounts within the following ranges:

- Fraud – from a minimum of 5 times to a maximum of 8 times the total duty loss, or 50% to 80% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise;
- Gross negligence – from a minimum of 2.5 times to a maximum of 4 times the total duty loss, or 25% to 40% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise; or
- Negligence – from a minimum of 0.5 times to a maximum of 2 times the total duty loss or 5% to 20% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise.

A person who discloses the circumstances of the section 1592 violation, before or without knowledge of the commencement of a formal investigation (i.e., makes a prior disclosure) can receive substantially reduced penalties.

- In the case of **negligence or gross negligence** violations, if there is an **actual** revenue loss (i.e., loss of duties, taxes or fees after Customs already has liquidated the entries as final), the reduced penalty is an amount equal to interest from the date of liquidation.
- In the case of **negligence or gross negligence violations**, if there is a **potential** revenue loss (i.e., loss of duties, taxes or fees prior to Customs liquidation of the entries as final), the penalty is remitted in full.
- In the case of **fraud** violations, the reduced penalty always equals one times the actual and potential revenue loss (or 10% of the dutiable value, if the violation did not affect the assessment of duties).

For further information concerning prior disclosures, consult Customs Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: The ABC's of Prior Disclosure*, dated May, 1998.

By delegation, the OR&R, ITC Division, and the Office of Chief Counsel both must approve all offers in compromise of a section 1592 penalty action, submitted pursuant to section 1617. The alleged violator may make an offer in compromise at any time, regardless as to whether Customs already has issued a pre-penalty or penalty notice.

Generally, Customs will not seize merchandise subject to a section 1592 penalty action. However, Customs will seize such merchandise in cases where it possesses a reasonable belief that:

- the alleged violator is insolvent;
- the alleged violator is beyond the jurisdiction of the U.S.;
- seizure is essential to protect the revenue; or

- seizure is essential to prevent the introduction of prohibited or restricted merchandise.

## **ii. Drawback Penalties (19 U.S.C. 1593a)**

Section 1593a provides for penalties against any person who:

- by fraud or negligence,
- seeks, or attempts to seek, the payment or credit of any drawback claim,
- by means of any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or any omission which is material.

Drawback, in pertinent part, is the refund or remission, in whole or in part, of a customs duty, fee or internal revenue tax (in connection with the importation of merchandise) imposed under Federal law. A drawback claim represents the drawback entry and related documents required by regulation in order to request drawback payment. (For further information concerning drawback, consult Customs Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: Drawback*, dated March, 1998.)

Customs also may issue claims for duties, in addition to penalties, for violations of section 1593a(a), which have resulted in a loss of revenue to the government. The notice of the duty claim may be issued to any person liable for payment of actual duties (e.g., the importer or, if unable to pay, the surety).

Generally, Customs may mitigate section 1593a penalties to amounts within the following ranges:

- Fraud - three (3) times to one and one-half (1 1/2) times the loss of revenue;
- Repeat negligence violation - fifty percent (50%) to twenty five percent (25%) the loss of revenue and;
- First negligence violation - twenty percent (20%) to ten percent (10%) the loss of revenue.

The FPFO decides petitions in cases where the assessed penalty is less than or equal to \$50,000 and OR&R, ITC Division, decides those petitions in cases where the assessed penalty is greater than \$50,000. The NSPO decides those supplemental petitions in cases where the assessed penalty is less than or equal to \$25,000, and OR&R, ITC Division, decides those supplemental petitions in cases where the assessed penalty is greater than \$25,000.

Similar to the recordkeeping compliance program provided under section 1509 (discussed below), in the absence of fraud or repetitive violations, participants of the drawback compliance program may receive a written notice of the violation in lieu of their first monetary penalty.

Customs considers the same mitigating and aggravating factors previously set forth for section 1592 penalties. Additionally, prior disclosures of the circumstances of the section 1593a violation also may result in substantially reduced penalties.

As stated earlier with regard to 19 U.S.C. 1592 penalties, the OR&R, ITC Division, and the Office of Chief Counsel both must approve all offers in compromise of a drawback penalty action, pursuant to section 1617.

Customs promulgated its final drawback penalty regulations in 65 Fed. Reg., 3803, Jan. 25, 2000. Consistent with these regulations, Customs can assess drawback penalties against anyone who filed a false drawback claim on or after November 25, 1998 (i.e., the date of Customs Bulletin publication of the automated drawback selectivity program).

### **iii. Broker Penalties (19 U.S.C. 1641)**

Generally, Customs will assess penalties against customs brokers (i.e., those licensed to transact customs business on behalf of others, pursuant to 19 CFR Part 111) up to a maximum of \$30,000 for the violations included in any one penalty notice. Customs may issue penalties or may revoke or suspend a broker's license or permit for violations of the broker's statutory or regulatory responsibility. (See our publication, *What Every Member of the Trade Community Should Know About: Customs Brokers* (March, 2000) for more detail. These include:

- failure of a broker to exercise responsible supervision and control over customs business. See 19 U.S.C. 1641(b)(4);
- cases in which a customs broker:
  - made a material false or misleading statement or omitted a material fact in connection with any license or permit application or report filed with Customs;
  - at any time after the filing of a license or permit application, was convicted of certain enumerated felonies or misdemeanors;
  - has violated any provision of any Customs laws, rules or regulations;
  - has counseled, induced, knowingly aided or abetted another person's violations of any Customs laws, rules or regulations;
  - without Customs written approval, has knowingly employed, or continues to employ, any person convicted of a felony; and
  - has in the course of Customs business, with intent to defraud, willfully and knowingly deceived, misled, or threatened any client or prospective client. (See 19 U.S.C. 1641(d)(1) and (d)(2)(A) )

In addition, pursuant to 19 U.S.C. 1641(b)(6), Customs may issue penalties (not to exceed \$10,000 for each transaction) against any person who intentionally transacts customs business, other than solely on its own behalf, without holding a valid customs broker's license.

In cases where the broker allegedly has violated any of the laws, rules or regulations enforced by Customs (i.e., 19 U.S.C. 1641(d)(1)(C)), in a fraudulent manner, it is appropriate for Customs to impose additional penalties under 19 U.S.C. 1592. It is Customs policy, in cases of negligence or gross negligence, to impose additional penalties under 19 U.S.C. 1592 only where the broker shared in the financial benefits to an extent over and above the prevailing brokerage fees.

The FPFO decides petitions, and the NSPO decides supplemental petitions, in cases where the penalty claim is less than or equal to \$10,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty claim is greater than \$10,000.

OR&R, ITC Division, and the Office of Chief Counsel both must approve all offers in compromise of a broker penalty action, submitted pursuant to section 1617.

#### **iv. Recordkeeping Penalties (19 U.S.C. 1509)**

Certain persons who fail to produce, upon demand, an entry record enumerated in the Customs Regulations pursuant to 19 U.S.C. 1509(a)(1)(A), commonly known as the “(a)(1)(A) list,” may be subject to recordkeeping penalties. The (a)(1)(A) list refers to records required by law or regulation for the entry of merchandise (whether or not Customs required their presentation at the time of entry). See 19 CFR Part 163, App.

The parties potentially liable for recordkeeping penalties include, but are not limited to,

- owners,
- importers,
- consignees,
- importers of record or entry filers.

Customs may assess a recordkeeping penalty against these parties, or their agents (including customs brokers), when they: import merchandise into the U.S., file drawback claims, transport or store merchandise carried or held under bond, or knowingly cause the importation or transportation or storage of merchandise carried or held under bond into or from the U.S. Customs also may assess recordkeeping penalties against those parties who engage in activities which require the filing of a declaration and/or entry, as well as against those parties who complete and sign a NAFTA Certificate of Origin.

Customs imposes recordkeeping penalties based on one of two possible levels of a party's culpability or behavior. These two levels of culpability are **willful failure** and **negligence**. If a party's failure to comply with Customs demand for an entry record resulted from a willful failure to produce that record, Customs may penalize that party in an amount not to exceed \$100,000 or an amount equal to seventy five percent (75%) of the appraised value of the merchandise, whichever is less. If a party's failure to comply

with Customs demand for an entry record is due to negligence, Customs may penalize that party in an amount not to exceed \$10,000 or an amount equal to forty percent (40%) of the appraised value of the merchandise, whichever is less.

A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements. The recordkeeping requirements are established either under the recordkeeping compliance program or an alternative program negotiated to suit the needs of the recordkeeper and Customs. Participants of the recordkeeping compliance program, in the absence of willful or repeat violations, may receive from Customs a written notice of a violation in lieu of a monetary penalty. However, repeat violations by the recordkeeper may result in Customs issuance of penalties and removal of certification under the program until corrective action is taken to Customs satisfaction.

Customs commenced the imposition of section 1509 recordkeeping penalties, for the failure to provide entry records lawfully demanded from July 15, 1996, the date the "(a)(1)(A) list" was published in the *Federal Register*. Prior to the FPFO's issuance of a recordkeeping prepenalty notice, it is necessary for the local Customs office contemplating the issuance of the prepenalty first to obtain review and approval from OR&R, ITC Division. This review procedure has been in effect from the time Customs could begin to issue recordkeeping penalties (i.e., July 15, 1996) and will remain in effect for one year commencing from the implementation date of the final recordkeeping guidelines. After this time, OR&R, ITC Division, may review any recordkeeping prepenalty notice, in its own discretion, if warranted by the circumstances.

In deciding petitions for relief from a recordkeeping penalty, Customs considers mitigating and aggravating factors similar to those set forth above for section 1592 penalties. (For further information concerning recordkeeping, consult Customs Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: Records and Recordkeeping Requirements*, dated June, 1998.)

#### **v. Falsity or Lack of Manifest (19 U.S.C. 1584(a)(1))**

Any vessel master or person in charge of any vehicle bound to the U.S. who fails to produce a manifest to the demanding Customs officer is liable for a penalty of \$1,000.

Additionally, in cases where Customs finds that the vessel master or responsible party has failed to manifest any merchandise on board the vessel or vehicle, the vessel master or responsible party is liable for a penalty equal to the lesser of \$10,000 and the domestic value of the merchandise. Customs also will assess such a penalty in cases where the merchandise has been unladen from the vessel or vehicle and the vessel master or responsible party does not include or describe the merchandise in the manifest, or provides a manifest description inconsistent with the actual merchandise.

An importing carrier, bonded carrier, container freight station operator, bonded cartman, bonded warehouse or foreign trade zone proprietor, importer or broker that

detects any manifest discrepancy must report the discrepancy. Such parties should file a manifest discrepancy report, or MDR, to report and correct discrepancies in manifested quantities or data elements.

Only section 1584(a)(1) penalties over \$1,000 require the FPFO's issuance of a prepenalty notice. Section 1584 penalties are secured by international carrier's bond (i.e., a contract between a carrier or his agent, and a surety, with Customs as the beneficiary, under which Customs can collect a penalty or liquidated damages). Because section 1584(a)(1) penalties may only be assessed up to \$10,000, the FPFO has been delegated the authority to decide all petitions and the NSPO has the delegated authority to decide all supplemental petitions.

#### **vi. Drug Related Manifest Penalties (19 U.S.C. 1584(a)(2))**

If any unmanifested merchandise (as provided for in 19 U.S.C. 1584(a)(1)), consists of certain controlled substances (illegal drugs such as marijuana, cocaine or smoking opium), Customs assesses penalties against the vessel master, person in charge of the vehicle, owner of the vessel or vehicle, or any other responsible party based on the quantity. For example, \$500 per ounce of marijuana or \$1,000 per ounce of heroin or cocaine. Section 1584 penalties are secured by international carrier's bond.

The FPFO decides petitions, and the NSPO decides supplemental petitions, in cases where the penalty liability is less than or equal to \$100,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty liability is greater than \$100,000. However, in all such cases involving Air or Sea Super Carrier Initiative Program signatories, regardless of the penalty liability, OR&R, ITC Division, decides the petitions.

The two main elements of a section 1584(a)(2) Carrier Initiative claim are: a) knowledge and b) highest degree of care and diligence. If Customs finds the carrier knew drugs were placed on the shipment or conveyance (i.e., knowledge), OR&R, ITC Division, will not grant any mitigation in its petition decision. If there is no such knowledge and the carrier exercised the highest degree of care and diligence, OR&R, ITC Division, will grant relief and full mitigation in its petition decision. In all other cases, the amount of relief depends upon the level of culpability.

Generally, OR&R, ITC Division, will mitigate penalties for unmanifested drugs as follows:

- In cases of negligence, penalties will be mitigated from ten (10) to twenty-five (25) percent of the original penalty assessment,
- In cases of gross negligence, penalties will be mitigated from twenty-five (25) to fifty (50) percent of the original penalty assessment.

### **vii. Equipment and Vessel Repairs (19 U.S.C. 1466)**

The owners or masters of vessels documented under U.S. laws to engage in foreign or coasting trade are liable for entry and payment of a 50 percent *ad valorem* duty on the costs incurred in any foreign country for:

- equipment purchased for the vessel;
- repair parts or materials to be used in connection with the vessel; and
- repair expenses.

If the vessel owner or master willfully or knowingly neglects or fails to report, make entry, and pay duties, or makes any false statement regarding such purchases or repairs without having reasonable cause to believe the truth of such statements, Customs may assess a penalty up to the value of the vessel or seize and forfeit the vessel.

Under current guidelines, the FPFO issues all prepenalty notices concerning equipment and vessel repair violations at the lower of four (4) times the loss of revenue (duty) or the value of the vessel. If the violation only consists of the late filing of documents, the FPFO will issue the prepenalty notice at two (2) times the loss of revenue. Section 1466 penalties are secured by international carrier's bond.

The FPFO decides petitions, and the NSPO decides supplemental petitions, in cases where the penalty amount is less than or equal to \$100,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty amount is greater than \$100,000.

### **viii. Penalties for Aiding Unlawful Importation (19 U.S.C. 1595a(b))**

Customs may assess penalties equal to the domestic value of any articles introduced or attempted to be introduced into the U.S. contrary to law. Any person who directs, assists financially or otherwise, or is in any way concerned in any unlawful activity provided for in 19 U.S.C. 1595a(a) is liable to a penalty equal to the domestic value of the article or articles introduced or attempted to have been introduced. Section 1595a(a) concerns the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the U.S. contrary to law. The introduction of prohibited merchandise and, in many cases, restricted merchandise, are common examples of the cases where Customs may issue a section 1595a(b) penalty. Some specific violations for which Customs issues section 1595a(b) penalties, include: 19 U.S.C. 1304 (improper country of origin marking), 19 U.S.C. 1448 (removal from Customs custody without authorization), and 21 U.S.C. 301 (introduction of adulterated or misbranded food).

The FPFO decides petitions, and the NSPO decides supplemental petitions, in cases where the domestic value of the merchandise is less than or equal to \$100,000.

OR&R, ITC Division, decides petitions and supplemental petitions in those cases where the domestic value is greater than \$100,000. The mitigation guidelines for remission of section 1595a(c) seizures apply to mitigation of 1595a(b) penalties.

#### **ix. Counterfeit Trademark Penalties (19 U.S.C. 1526(f))**

Section 1526(f) provides for fines against anyone who directs or assists (financially or otherwise) the importation of merchandise, for sale or public distribution, that is seized pursuant to 19 U.S.C. 1526(e). Section 1526(e) provides for the seizure of merchandise bearing a counterfeit mark, imported in violation of 15 U.S.C. 1124, and the forfeiture of such merchandise in the absence of written consent of the trademark owner. [A counterfeit trademark is a spurious trademark that is identical to, or substantially indistinguishable from, a registered trademark. 19 CFR 133.21(a).] (For further information concerning counterfeit goods, consult Customs Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: Customs Enforcement of Intellectual Property Rights*, dated June, 1999.)

Customs will assess section 1526(f) penalties as follows:

- First seizure – penalties up to the value of the genuine merchandise based on the manufacturer's suggested retail price (MSRP).
- Subsequent seizures – penalties up to twice the value of the genuine merchandise based on the MSRP.

The FPFO decides petitions, and the NSPO decides supplemental petitions, in cases where the fine is less than or equal to \$100,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the fine is greater than \$100,000.

Customs may mitigate the section 1526(f) penalties to amounts within the following ranges:

- First offense with mitigating, but no aggravating factors: 10-30% of the MSRP of the seized goods.
- First offense with aggravating factors or second offense with no aggravating factors: 30-50% of the MSRP of the seized goods.
- Second offense with aggravating factors or third/subsequent offense: 50-80% of the MSRP of the seized goods.

Customs applies the same mitigating and aggravating factors previously set forth concerning the mitigation of forfeitures.

#### **x. Arrival, Reporting, Entry, and Clearance Violations (19 U.S.C. 1436)**

Any master, person in charge of a vehicle, or aircraft pilot who commits any of the following violations is liable for a \$5,000 penalty for the first violation and a \$10,000 penalty for each subsequent violation for:

- failure to comply with 19 U.S.C. 1431 (i.e., presenting manifests), 19 U.S.C. 1433 (i.e., reporting vessel, vehicle and aircraft arrival), 19 U.S.C. 1434 (i.e., filing vessel entry), or 46 U.S.C. App. 91 (i.e., obtaining vessel clearance);
- presenting or transmitting any forged, altered or false document, information or manifest to Customs, without revealing the facts, under 19 U.S.C. 1431, 19 U.S.C. 1433(d), 19 U.S.C. 1434, or 46 U.S.C. App. 91; or
- failure to make entry or to obtain clearance as required by 19 U.S.C. 1434, 19 U.S.C. 1644 (i.e., civil air navigation laws and vessel entry and clearance regulations), or 46 U.S.C. App. 91.

Additionally, any conveyance used in connection with such violation is subject to seizure and forfeiture. Generally, Customs does not seize a conveyance unless aggravating factors are present or another violation of law is in evidence.

Section 1436 penalties generally are secured by international carrier's bond.

The FPFO decides petitions, and the NSPO decides supplemental petitions, in cases where the penalty liability is less than or equal to \$100,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty liability is greater than \$100,000.

#### **xi. Coastwise Trade (Jones Act) Violations (46 U.S.C. App 883)**

Section 46 U.S.C. App. 883 prohibits foreign flag vessels from transporting merchandise laden at a domestic port to any other domestic port (whether directly or via a foreign port). Section 883 provides for seizure and forfeiture of improperly transported merchandise or assessment of a monetary penalty equal to the domestic value of such merchandise. Customs may assess a penalty against the master, owner, or any party responsible for the improper transportation.

Section 883 penalties may be assessed in amounts up to the value of the merchandise moved coastwise in a nonqualified vessel or the cost of the transportation, whichever is greater. If the violation arose because of an emergency to the vessel that required, for reasons of safety or other humanitarian cause, that coastwise transportation occur, the penalty should not exceed \$100,000. If the violation occurred for commercial expediency, Customs does not limit the penalty amount.

Section 883 penalties generally are secured by international carrier's bond.

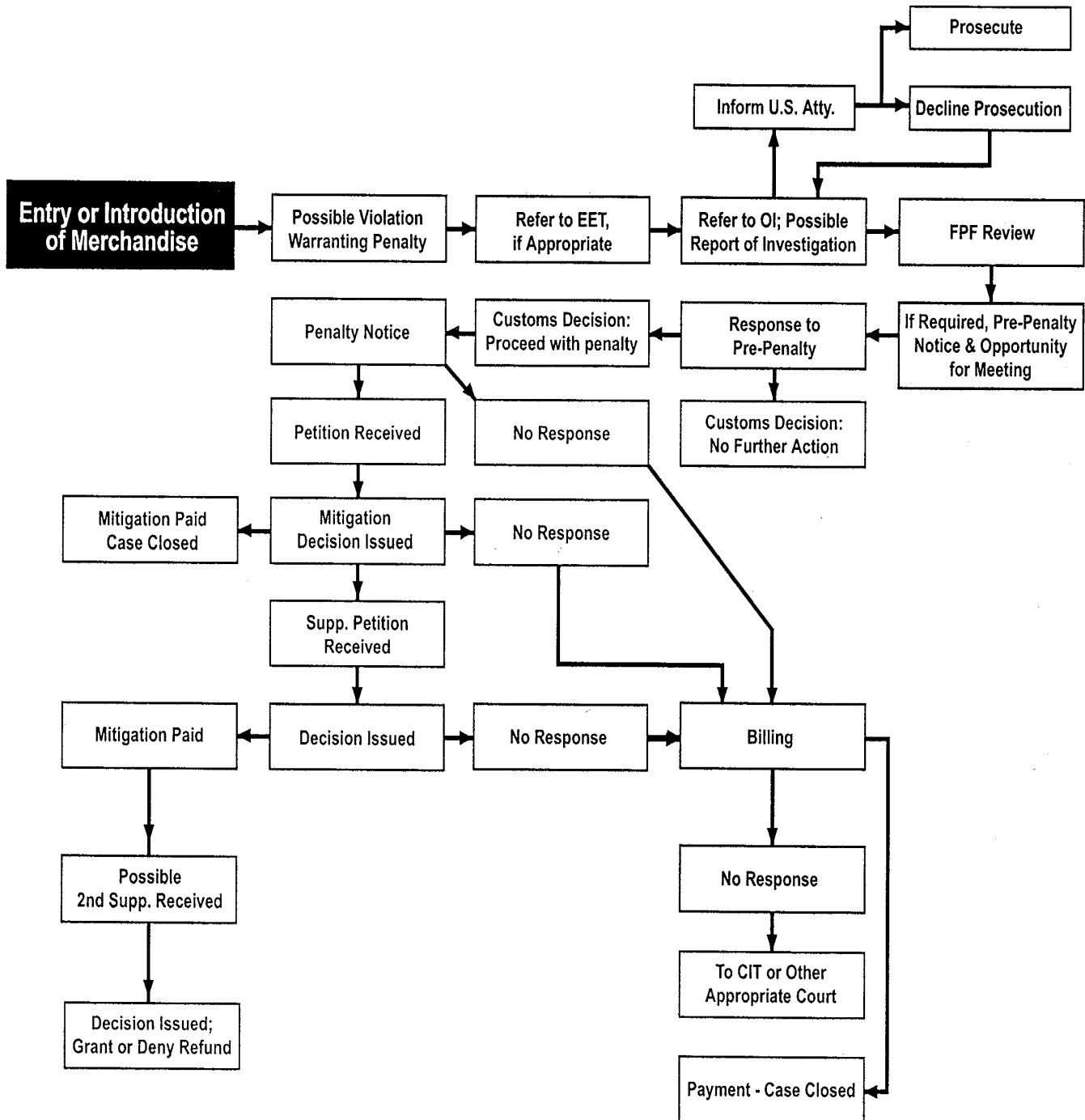
The FPFO decides petitions, and the NSPO decides supplemental petitions, in cases where the penalty liability is less than or equal to \$100,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty liability is greater than \$100,000.

If the petition for relief establishes that the violation occurred as a direct result of an arrival of the transporting vessel in distress, remission in full is appropriate. If the vessel was not in distress, but the transportation occurred because of some other humanitarian reason (e.g., disembarkation of crewman with life threatening injuries), the claim may be remitted in full. If the violation resulted because of commercial expediency, Customs may mitigate the penalty to an amount between 35 and 50 percent of that assessed.

[See next page for a chart of the penalties process]

## Administrative Process:

# Penalties



Offers in compromise may be submitted at any point in the process. All are subject to approval by ORR, ITC Division and Chief Counsel.

## **V. Administrative Process For Liquidated Damages Assessed Against Parties Liable For Violation Of Bond Conditions**

### **A. What Is A Bond And When May Breach Of A Bond Obligation Give Rise To Liquidated Damages Claims?**

Customs laws and regulations require bonds to be filed by the importer of record, warehouseman and other custodians of merchandise, and in bond and international carriers of merchandise to ensure compliance with a variety of obligations relating to the entry, transportation and storage of imported goods, into and through, the United States. The bond is a contract between the principal (e.g., importer, carrier, warehouseman, etc.) and the surety with Customs as the beneficiary on the bond.

If there is a breach of an obligation under a bond (e.g., failure of the importer to comply with a proper request to redeliver merchandise to Customs custody), Customs may issue a claim for liquidated damages at an amount prescribed under the regulation for the type of breach involved. (As an example, for failure to redeliver FDA rejected foods, Customs currently assesses liquidated damages against the importer at an amount equal to three times the appraised value of the goods involved in the breach.) As the guaranteeing party, the surety is legally liable, or “stands in the shoes” of the importer, if the importer fails to pay a liquidated damages claim.

Normally, penalties are not secured by bonds. There is one exception, the International Carrier Bond. Although Customs may assess and collect a penalty amount against the party responsible for the breach (the principal) up to the amount provided for by law, Customs is limited to the amount provided for by the bond. In a collection action against the surety.

### **B. What Are The Primary Types Of Bonds And What Types Of Infractions Do They Cover?**

The three primary types of bonds are **importation bonds**, **custodial bonds**, and **international carrier bonds**.

First, parties such as importers and customs brokers, file importation bonds with Customs. Some examples of the types of infractions that may constitute a breach of an importation (or entry) bond include:

- late filing or non-filing of entry summaries;
- late payment or non-payment of estimated duties;
- temporary importation violations;
- failure to redeliver merchandise into customs custody; and
- carnet violations (i.e., violations pertaining to the temporary importation of certain types of merchandise).

See 19 CFR 113.62 for basic importation and entry bond conditions.

Second, parties such as in-bond carriers, as well as operators of warehouses, container freight stations (CFS), centralized examination stations (CES), duty free stores and foreign trade zones (FTZ), file custodial bonds with Customs. Some examples of the types of infractions that may constitute a breach of a custodial bond include cases where:

- merchandise cannot be located or accounted for in a duty-free store, bonded warehouse or foreign trade zone;
- merchandise has been removed without permit or inconsistent with regulation; or
- merchandise has been deposited, manipulated, manufactured, or destroyed without permit or inconsistent with the activity described in the permit.

See 19 CFR 113.63 for basic custodial bond conditions and 19 CFR 113.73 for foreign trade zone operator bond conditions.

Third, parties such as carriers responsible for manifests and cargo delivery, file international carrier bonds with Customs. Some examples of the types of infractions that may constitute a breach of an international carrier bond are:

- conveyance arrival or reporting violations (e.g., failure to immediately report a vessel arrival to Customs);
- manifest penalties (e.g., failure to have a manifest, deliver a manifest upon arrival, possess an adequate manifest, or file a manifest discrepancy report to Customs);
- cargo delivery or unloading violations (e.g., failure to deliver merchandise to a CES, delivery of merchandise without Customs authorization, unloading without a permit, failure to timely notify Customs of unentered or unclaimed general order merchandise, or coastwise trade violations); and
- shortage, irregular delivery, or non-delivery of bonded merchandise (e.g., failure to deliver part of a shipment, unauthorized or untimely delivery, or direct delivery to the consignee). See 19 CFR 113.64 for international carrier bond conditions.

## **C. What Are The Steps To The Liquidated Damages Process?**

### **i. Customs May Consider “Option 1” Resolution**

When a bond breach or infraction occurs, Customs first will consider whether “**Option 1**” resolution may be possible. Option 1 resolution can be described as a “parking ticket” approach insofar as it involves the payment of a pre-set amount to eliminate petitioning and, therefore, settle cases quickly. Of note, Customs still assesses the liquidated damages claim at the normal amount (i.e., an amount up to that for which the bond is written) even when the Option 1 procedure is available.

Option 1 settlement only applies to those cases where all facts are known to Customs at the time of initial review and the harm to the government is readily quantifiable and understood. The most common examples of liquidated damages claims which may be resolved through the Option 1 procedure are claims relating to the late filing of an entry summary, invoice or other entry document.

Option 1 settlement would not be available for those cases where the merchandise was not held for Customs examination and the facts surrounding the release of the merchandise are unknown. Similarly problematic are cases involving temporary import bonds (TIBs) where Customs only has an open entry. In this case, Customs does not know whether the merchandise either continues to remain in the U.S., has been exported outside the bond period, or has been exported timely but without the required Customs supervision. Insofar as Customs would learn the facts only after presentation of a petition for relief, Option 1 would not be feasible and it would be necessary to resolve the matter through the petition process.

If Option 1 resolution is unavailable, or when offered to the violator the Option 1 amount is not paid, Customs will notify the principal of its liability for liquidated damages along with a demand for payment. The sureties on the bond simultaneously will be advised of the liability incurred by the principal, and will be given the opportunity to pay the Option 1 amount in cases where the principal does not pay.

## **ii. Parties May File Petitions For Relief**

The FPFO decides petitions, and the NSPO decides supplemental petitions, in cases where the liquidated damages claim is less than or equal to \$100,000. In addition, the FPFO maintains jurisdiction regardless of the amount of the liquidated damages claim, in all late filing of entry summary cases and those cases involving a shortage, irregular delivery or nondelivery by a bonded carrier (19 CFR 18.8 and 18.2). With the exception of the foregoing cases, OR&R, ITC Division, decides petitions and supplemental petitions in cases where the liquidated damages claim is greater than \$100,000. The Department of the Treasury does not review any liquidated damages cases.

## **iii. Customs May Refer Claims For Collection Action And/Or Judicial Enforcement**

If Customs issues a petition decision and any party liable for liquidated damages fails to petition for relief or to pay the liquidated damages within thirty (30) days (or such additional time as the FPFO may grant) from the date of mailing the notice of liquidated damages, Customs refers the claim to the Department of Justice for collection.

## **iv. Customs Also May Compromise Or “Settle” Claims**

By delegation, the FPFO may approve all offers in compromise (through coordination with Associate Chief Counsel, Indianapolis/Account Services Division) for settlement of liquidated damages claims or any penalty secured by bond, pursuant to

section 1617, where the liability is less than or equal to \$100,000. OR&R, ITC Division, with concurrence of the Office of Chief Counsel, approves all offers in compromise where the liability is greater than \$100,000.

## **D. What Are Customs Standards For Mitigation Or Cancellation Of Claims For Liquidated Damages?**

Pursuant to 19 U.S.C. 1623, Customs may cancel any bond or any claims for liquidated damages made against such a bond, upon payment of a lesser amount or penalty or upon such other terms and conditions as Customs deems sufficient. All guidelines for bond cancellation are published. Current guidelines appear in:

- *Treasury Decision (T.D.) 99-29*, which covers claims relating to General Order notification, misdelivery of inbound cargo and delivery of merchandise from Container Freight Stations or Centralized Examination Stations without Customs authorization;
- *T.D. 98-53*, which covers claims relating to the presentation of permits for softwood lumber; and
- *T.D. 94-38*, which covers claims relating to late filing of entry summaries, TIBs, failure to redeliver merchandise to Customs custody, bonded warehouses, foreign trade zones, Shipper's Export Declaration (SED) and outbound (export) violations, and airport security.

Customs made recent changes under T.D. 99-29 to the cargo misdelivery guidelines, raising mitigation amounts significantly, particularly when Customs examination was required for the shipment involved in the breach.

Under the 1994 revisions (T.D. 94-38) to bonded warehouse and foreign trade zone guidelines, Customs adjusted amounts to correlate more accurately to the harm suffered. For example, for breaches involving loss of merchandise, Customs now bases its disposition amount upon a multiple of the revenue loss involved. On the other hand, Customs disposition amounts for breaches not involving merchandise (e.g., document filing, file folder updating) involve flat sums. Customs also revised the TIB guidelines to account for the severity of the breach (e.g., document-filing breaches involve less harsh guidelines than breaches involving exportation without supervision).

While these cited Treasury Decisions should be consulted for a full explanation, some mitigation ranges for liquidated damages claims include the following:

- Non-filing or late filing of entry summary: \$100 or \$200 plus payment of all estimated duties due plus interest.
- Temporary Importation Bond breaches: From one to five percent (1 to 5%) of the claim but no lower than \$100 (late filing of export documents), to no relief (double the duties, taxes and fees if the merchandise is not exported or destroyed).
- Failure to redeliver to Customs custody: From one to five percent (1 to 5%) of the claim but no lower than \$100 (merchandise redelivered beyond the permissible

time period), to no relief (up to three (3) times the value of the goods) for restricted or prohibited merchandise.

- In-bond misdelivery: From \$100-\$500 for late delivery of documents or merchandise to Customs, to no relief (up to three (3) times the value of the goods) for misdelivery of restricted merchandise.
- Warehouse/Foreign Trade Zone bond breaches:
  - Violations involving merchandise – From one to six (1 to 6) times the loss of revenue in lost merchandise cases; no relief (three (3) times value) for restricted merchandise.
  - Violations not involving merchandise (generally document related) – \$100 per breach.
- Airport security bond breaches: From \$100 for document violations, to no relief (\$1,000 per violation) for failing to relinquish badges, unauthorized presence in a secured area or failing to follow the orders of a Customs officer.
- Late filing of export documents (SEDs/bills of lading): From \$50 for one day late (per regulation), to no relief (\$1,000) for non-filing.
- General Order eligibility notifications (per bill of lading): From \$100 (late notification), to no relief (\$1,000) for failure to notify.

Note that Customs maintains the authority to deviate from these guidelines based on the particular facts and circumstances surrounding any case.

[See next page for chart of the liquidated damages process]

### Administrative Process:



### 1. Principal = Importer of Record

## 2. Surety = Underwriter of Debt

### 3. Creditor = Customs

### Bond Breach (Violation)

**Consider Option 1  
Mitigation & Resolution**

Mitigation  
Offered & Paid

**Case Closed**

**Option 1 Unavailable;  
or Offered but not Paid**

**Notice Issued  
to Principal**

## Petition Received

### Mitigation Decision Issued

No Response

**Supp. Petition Received**

Mitigation Paid

### Decision Issued

No Response

No Response

## Notice to Surety

## Petition Received

### Decision Issued

\_\_\_\_\_

**1**

No Response

Possible 2nd  
Supp. Received

**Decision Issued;  
Grant or Deny Refund**

Mitigation Paid

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### Decision issued

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244

115

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Payment  
Case Closed

\* This process also applies to collections

from sureties of penalties secured

by bonds.

**Offers in compromise may be submitted**

at any point in the process. They are subject

to approval by ORR, ITC Division and Chief

**Counsel if >100,000.**

## **ADDITIONAL INFORMATION**

### **The Internet**

The U. S. Customs Service's home page on the Internet's World Wide Web, provides the trade community with current, relevant information regarding Customs operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, Customs publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site links to the Customs Electronic Bulletin Board (CEBB), an older electronic system on which Customs notices and drafts were posted. Since December, 1999 the CEBB has been only accessible through the web site. The web site also links to the home pages of many other agencies whose importing or exporting regulations Customs helps to enforce. Customs web site also contains a wealth of information of interest to a broader public than the trade community -- to international travelers, for example.

The Customs Service's web address is <http://www.customs.gov>

### **Customs Regulations**

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 1999 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Customs Regulations from April 1998 through March 1999, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin*, described below.

### **Customs Bulletin**

The *Customs Bulletin and Decisions* ("*Customs Bulletin*") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as Customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

## Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The 1998 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and the Customs Service by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The 1998 edition contains a new section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between Customs and the import community, wherein Customs communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that Customs is provided accurate and timely data pertaining to his or her importations.

Single copies may be obtained from local Customs offices or from the Office of Public Affairs, U.S. Customs Service, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the Customs web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

## Video Tapes

The Customs Service has prepared a series of video tapes in VHS format for the trade community and other members of the public. As of the date of this publication, four tapes are available and are described below.

If you would like more information on any of the tapes described below, or if you would like to order them, please send a written request to: U.S. Customs Service, Office of Regulations and Rulings, Suite 3.4A, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a *check or money order drawn on a U.S. financial institution* and made payable to U.S. Customs Service. Prices include postage.

- *Rules of Origin for Textiles and Apparel Products* is a two-hour tape aimed at increasing understanding of the new rules, which became effective July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms, or it can be ordered from the U.S. Customs Service for \$20.00.
- *Customs Compliance: Why You Should Care* is a 30-minute tape divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in the importing or exporting business with an overview of

the significant features of the Customs Modernization Act and the reasons to adopt new strategies in order to minimize legal exposure under the Act.

Part II is intended primarily for import/export compliance officers, legal departments and company officers. About 12 minutes long, Part II explains why Customs and the trade can benefit from sharing responsibilities under Customs laws. It also provides viewers with legal detail on record keeping, potential penalties for noncompliance, and on the Customs prior-disclosure program. The cost is \$15.00.

- *Account Management: Team Building for World Trade*, a 13-½-minute tape on account management, discusses what account management is and why there is a need for it. Account Management is a new approach to working with the trade in which a company is treated as an account, rather than being dealt with on a transaction by transaction basis. The tape includes discussions with Customs account managers and representatives of importers (“accounts”) relating to the benefits of account management from the perspectives of the both the Customs Service and the trade community. The cost is \$15.00.
- *General-Order Warehousing: Rules for Handling Unclaimed Merchandise*, 90 minutes long, was prepared jointly by the Customs Service and the trade community on the subject of general-order merchandise (unclaimed goods). The tape includes question and answer discussions that define procedures required to implement the new general-order laws and regulations and why there is a need to have effective procedures for handling unclaimed goods. The cost is \$15.00.

## **Informed Compliance Publications**

The U. S. Customs Service has prepared a number of Informed Compliance publications in the “*What Every Member of the Trade Community Should Know About...*” series. As of the date of this publication, the subjects listed below were available.

- <sup>4</sup> 1. Customs Value (15/96, <sup>4</sup>Revised 12/99)
- <sup>1</sup> 2. Raw Cotton: Tariff Classification and Import Quotas (5/13/96)
- <sup>1</sup> 3. NAFTA for Textiles & Textile Articles (5/14/96)
- 4. Buying & Selling Commissions (16/96, Revised 1/2000)
- <sup>1</sup> 5. Fibers & Yarn (8/96)
- <sup>3</sup> 6. Textile & Apparel Rules of Origin (10/96, Revised 11/98)
- <sup>1</sup> 7. Mushrooms (10/96)
- <sup>1</sup> 8. Marble (11/96)
- <sup>1</sup> 9. Peanuts (11/96)
- 10. Bona Fide Sales & Sales for Exportation (11/96, Revised 1/2000)
- <sup>2</sup> 11. Caviar (2/97)
- <sup>2</sup> 12. Granite (2/97)

- 13. Distinguishing Bolts from Screws (<sup>2</sup>5/97, Revised 5/2000)
- <sup>2</sup> 14. Internal Combustion Piston Engines (5/97)
- <sup>2</sup> 15. Vehicles, Parts and Accessories (5/97)
- <sup>2</sup> 16. Articles of Wax, Artificial Stone and Jewelry (8/97)
- <sup>2</sup> 17. Tariff Classification (11/97)
- <sup>2</sup> 18. Classification of Festive Articles (11/97)
- <sup>3</sup> 19. Ribbons & Trimmings (1/98)
- <sup>3</sup> 20. Agriculture Actual Use (1/98)
- <sup>3</sup> 21. Reasonable Care (1/98)
- <sup>3</sup> 22. Footwear (1/98)
- <sup>3</sup> 23. Drawback (3/98)
- <sup>3</sup> 24. Lamps, Lighting and Candle Holders (3/98)
- <sup>3</sup> 25. NAFTA Eligibility and Building Stone (3/98, Revised 12/98)
- <sup>3</sup> 26. Rules of Origin (5/98)
- <sup>3</sup> 27. Records and Recordkeeping Requirements (6/98)
- <sup>3</sup> 28. ABC's of Prior Disclosure (6/98)
- <sup>3</sup> 29. Gloves, Mittens and Mitts (6/98)
- <sup>3</sup> 30. Waste & Scrap under Chapter 81 (6/98)
- <sup>3</sup> 31. Tableware, Kitchenware, Other Household Articles and Toilet Articles of Plastics (11/98)
- <sup>3</sup> 32. Textile & Apparel Rules of Origin Index of Rulings (11/98)
- <sup>4</sup> 33. Knit to Shape Apparel Products (1/99)
- <sup>4</sup> 34. Hats and Other Headgear (under HTSUS 6505) (3/99)
- <sup>4</sup> 35. Customs Enforcement of Intellectual Property Rights (6/99)
- <sup>4</sup> 36. Classification of Children's Apparel (6/99)
- 37. Accreditation of Laboratories and Gaugers (<sup>4</sup>9/99, Revised 3/2000)
- <sup>4</sup> 38. Classification of Sets (9/99)
- <sup>4</sup> 39. Marking Requirements for Wearing Apparel (9/99)
- <sup>4</sup> 40. Fiber Trade Names & Generic Terms (11/99)
- <sup>4</sup> 41. NAFTA Country of Origin Rules for Monumental & Building Stone (12/99)
- 42. Diodes, Transistors & Similar Semiconductor Devices (1/2000)
- 43. Soldering and Welding Machines and Apparatus (1/2000)
- 44. Cane and Beet Sugar (Quota, Classification & Entry) (1/00, Revised 3/2000)
- 45. Turbojets, Turbopropellers and Other Gas Turbines, (HTSUS 8411) and Parts Thereof (1/2000)
- 46. Writing Instruments of Heading 9609 HTSUS (1/2000)
- 47. New Decisions on Candle Holders v. Decorative Glass Articles (2/2000)
- 48. Customs Brokers (3/2000)
- 49. Proper Deductions of Freight and Other Costs from Customs Value (3/2000)
- 50. Table and Kitchen Glassware (3/2000)
- 51. Coated Nonalloy Flat-Rolled Steel (3/2000)
- 52. Customs Administrative Enforcement Process: Fines, Penalties, Forfeitures and Liquidated Damages (4/2000, Revised 6/2000)
- 53. Wadding, Gauze, Bandages & Similar Articles (HTSUS 3005) (4/2000)
- 54. Tractors (HTSUS 8701) vs. Heavy Industrial Machinery (HTSUS 8429 & 8430) (4/2000)

■ 55. Classification and Marking of Watches and Clocks (5/2000)

■ indicates publications which are, or will be, available for downloading from the Customs web site on the Internet: <http://www.customs.gov>;

<sup>1</sup> denotes reprinted in *30/31 Customs Bulletin No.50/1*, January 2, 1997;

<sup>2</sup> denotes reprinted in *32 Customs Bulletin No.2/3*, January 21, 1998;

<sup>3</sup> denotes reprinted in *32 Customs Bulletin No. 51*, December 23, 1998.

<sup>4</sup> denotes reprinted in *33 Customs Bulletin No. 51*, December 22, 1999

Check the Customs Internet web site for more recent publications.

## Value Publications

*Customs Valuation under the Trade Agreements Act of 1979* is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 CFR §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

*Customs Valuation Encyclopedia* (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Customs Service Internet web site.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may be also be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

## **“Your Comments are Important”**

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs, call 1-888-REG-FAIR (1-888-734-3247).

**REPORT SMUGGLING 1-800-BE-ALERT**



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